

*Stature Doc # 3*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JOSEPH J. CARROLL,

Index No.: 07-CV-11577

Plaintiff,

- against -

NOTICE OF MOTION

CITY OF MOUNT VERNON,

ERNEST D. DAVIS, Individually and as Mayor  
of the City of Mount Vernon

CITY OF MOUNT VERNON DEPARTMENT  
OF FIRE,

and

NICHOLAS CICCCHETTI, Individually and as  
Commissioner of Fire for the City of Mount Vernon

Defendants.  
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**MEMO ENDORSED**

*This motion is denied as moot and may be re-filed against amended Complaint. So Ordered*

**PLEASE TAKE NOTICE**, that upon the accompanying Memorandum of Law dated January 29, 2008, Defendants, City of Mount Vernon, Ernest D. Davis, City of Mount Vernon Department of Fire, and Nicholas Cicchetti, will move this Court, before the Honorable Charles L. Brieant, at the United States Courthouse located at 300 Quarropas Street White Plains, New York 10601 on February 29, 2008, at 10:00 a.m., or as soon thereafter as counsel may be heard for an Order pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure dismissing the Complaint in its entirety.

**PLEASE TAKE FURTHER NOTICE**, that pursuant to Civil Rule 6.1 of the Local Rules of the Southern and Eastern Districts of New York, papers in opposition to this motion must be served on Defendant's counsel within ten (10) business days after service of this Notice of Motion.

Dated: Garden City, New York  
January 29, 2008

Respectfully submitted,

BOND, SCHOENECK & KING, PLLC

By: /s/Howard M. Miller  
Howard M. Miller (HMM: 4538)  
Attorneys for Defendants  
1399 Franklin Avenue, Suite 200  
Garden City, New York 11530  
(516) 267-6318

### CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2008 the foregoing document was filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure, and/or the Southern District's Local Rules, and/or the Southern District's Rules on Electronic Service upon the following parties and participants:

Andrew P. Fleming, Esq.  
Chiacchia & Fleming, LLP  
5113 South Park Avenue  
Hamburg, New York 14075

s/ Howard M. Miller  
Howard M. Miller (HMM: 4538)  
Bond, Schoeneck & King, PLLC  
Attorneys for Defendants  
1399 Franklin Avenue, Suite 200  
Garden City, New York 11530  
(516) 267-6318